Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
Application by AMERITECH MICHIGAN for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Michigan	CC Docket No. 97-137

COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Paging and Narrowband PCS Alliance ("PNPA") of the Personal Communications Industry Association[1] respectfully submits its comments on the application by Ameritech Michigan and its affiliates ("Ameritech") to provide in-region, interLATA services in Michigan. PNPA urges the Commission to deny the Ameritech application unless and until Ameritech complies fully with its interconnection obligations toward paging companies and other providers of commercial mobile radio services ("CMRS"). In particular, PNPA is concerned that local exchange carriers ("LECs") generally, and Ameritech specifically, continue to *charge* PNPA members who provide paging services for *LEC-originated* traffic. These practices violate the Commission's long-standing policy of mutual compensation between LECs and CMRS providers, as well as the specific provisions of the Telecommunications Act of 1996 and the regulations adopted by the Commission both before and after that Act. It is not in the public interest to permit Ameritech

[1] PCIA is the international trade association that represents the interests of both commercial and private mobile radio service providers. PCIA's Federation of Councils includes the PNPA; the Broadband PCS Alliance; the Specialized Mobile Radio Alliance; the Site Owners and Managers Association; the Association of Wireless System Integrators; the Association of Communications Technicians; and the Private System Users Alliance. PNPA represents both traditional paging service providers and narrowband PCS licensees. As used in these comments, the term "paging" is intended to embrace narrowband PCS as well.

into the long distance market in its own region under these circumstances, and the Commission should take this critical opportunity to demonstrate its commitment to fair interconnection relationships between *all* carriers.

Ameritech Is Not Complying with Its Interconnection Obligations

The Commission has long recognized that both wireline and mobile service providers are carriers, and that each should be obligated to interconnect for the purpose of terminating the other's traffic.[2] Ten years ago, the Commission expressly stated that wireline/cellular interconnection should be based on the principle of "mutual compensation" — that is, that mobile service providers and LECs "are equally entitled to just and reasonable compensation for their provision of access."[3]

When Congress amended the Communications Act in 1993 to create a comprehensive federal framework for commercial mobile radio services,[4] the Commission reaffirmed its reciprocal compensation policies and extended them to all CMRS providers.[5] The Commission adopted a new regulation on LEC-CMRS interconnection that expressly requires "mutual compensation."[6] LECs must pay CMRS providers "reasonable compensation . . . in connection with terminating traffic that originates on facilities of the local exchange carrier," and CMRS providers must pay for CMRS-originated traffic.[7] By requiring LECs to *compensate* CMRS

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2 *Cellular Communications Systems*, 86 F.C.C.2d 469, 496 (1981), *recon.*, 89 F.C.C.2d 58 (1982).

3 *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 F.C.C. Rcd. 2910, 2915 (1987), *recon.*, 4 F.C.C. Rcd. 2369 (1989). The Commission adopted these policies pursuant to section 201 of the Communications Act of 1934, 47 U.S.C. § 201.

4 47 U.S.C. § 332. Section 332 expanded the Commission's authority under section 201 of the Act to order interconnection requested by CMRS providers. 47 U.S.C. § 332(c)(1)(B).

5 *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 F.C.C. Rcd. 1411, 1497-1501 (1994).

6 47 C.F.R. § 20.11(b), *reprinted as originally adopted at* 9 F.C.C. Rcd. 1411, 1520-21.

7 *Id.*

providers for LEC-originated traffic (and *vice versa*), the regulation logically prohibits any LEC from *collecting* from a CMRS provider for costs associated with LEC-originated traffic. The Commission has confirmed that LEC attempts to charge CMRS providers for LEC-originated traffic violate section 20.11 of the Commission's rules.[8]

These same obligations were independently imposed by the Telecommunications Act of 1996.[9] Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[10] Paging providers, like all other CMRS providers, offer "telecommunications."[11] Thus, the reciprocal compensation obligation of section 251(b)(5) — which forbids LEC charges for LEC-originated traffic — applies to paging providers as well as other CMRS providers. The Commission made this explicit in its *Local Interconnection Order,*[12] where it stated: "All CMRS providers offer telecommunications. Accordingly, LECs are obligated pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, *including paging providers,* for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal

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8 *Local Interconnection Order,* 11 F.C.C. Rcd. at 16044, 16044 n.2633. While the Commission has invoked sections 251 and 252 of the Telecommunications Act of 1996 to promulgate new interconnection requirements in Part 51 of the Commission's rules (discussed below), the Commission retains its section 332 jurisdiction, *Local Interconnection Order,* 11 F.C.C. Rcd. at 16005, as exercised in section 20.11 of the Commission's rules.

9 Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

10 47 U.S.C. § 251(b)(5). Significantly, this is an obligation so fundamental that it is imposed on *all* LECs, not just incumbents. Ameritech, as an incumbent LEC, has the additional obligation "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill" its reciprocal compensation obligation. 47 U.S.C. § 251(c)(1).

11 47 U.S.C. § 3(43) ("telecommunications" defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received").

12 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 F.C.C. Rcd. 15499 (1996) ("*Local Interconnection Order*").

compensation . . . ."[13] The Commission also noted once again that section 251(b)(5), by requiring the LEC to *compensate* the CMRS provider for LEC-originated traffic, necessarily prohibits any arrangement by which the LEC *charges* for LEC-originated traffic.[14]

The FCC codified its interpretation in section 51.703(b) of its rules, which states as plainly as possible: "A LEC *may not assess charges* on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."[15] This regulation was briefly stayed by the U.S. Court of Appeals for the Eighth Circuit, but that stay was lifted and the regulation is in force today.[16] Indeed, several incumbent LECs, including Bell Atlantic and NYNEX, agree with PNPA that section 51.703(b) forbids *all* LEC charges for LEC-originated traffic, including the costs of facilities used for the transport and termination of that traffic.[17] The Common Carrier Bureau has recently confirmed this interpretation.[18]

In addition to Part 51 of the Commission's rules, section 20.11 of the Commission's rules independently prohibits the LEC charges for LEC-originated traffic. This rule was never stayed and continues in effect without regard to any stay of *any* Part 51 rule. The Commission was quite clear that LEC-imposed charges for LEC-originated traffic are "in violation of section 20.11 of our rules."[19]

Despite the clear language of section 51.703(b), despite the Commission's interpretation of section 20.11, and despite the Commission's many previous efforts to facilitate fair

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13 *Local Interconnection Order*, 11 F.C.C. Rcd. at 15997 (emphasis added). *See also id.* at 16016.
14 *Id.* at 16016.
15 47 C.F.R. § 51.703 (1996) (emphasis added).
16 *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Nov. 1, 1996).
17 Individual PNPA members have advised Ameritech of this fact both orally and in writing.
18 Letter from Regina M. Keeney to Cathleen Massey, Kathleen Abernathy, Mark Stachiw, and Judith St. Ledger-Roty (March 3, 1997).
19 *Local Interconnection Order*, 11 F.C.C. Rcd. at 16044, 16044 n.2633.

interconnection between LECs and paging providers for at least ten years prior to the passage of the Telecom Act of 1996, Ameritech continues to charge paging providers in Michigan for *Ameritech-originated traffic*.[20] This strikes at the heart of the Commission's interconnection policy. Under the Telecom Act of 1996 and the Commission's implementing regulations, paging providers *must accept* the LEC-originated traffic to accommodate Ameritech subscribers who wish to call paging subscribers. Ameritech, for its part, must deliver this traffic free of charge. It may *not* charge paging providers for traffic that originates on its own network, any more than it can charge any other class of co-carriers to whom it delivers Ameritech-originated traffic.

State regulatory authorities are also interpreting the reciprocal compensation requirement of sections 251 and 252 to prohibit LECs from charging their co-carriers for calls that originate on the LEC's network. Recently, the California Public Utilities Commission rejected an arbitrated interconnection agreement between Cook Telecom, Inc., a one-way paging company, and Pacific Bell.[21] The California PUC found that Congress required LECs to interconnect with *all* providers of communication services, and to compensate each carrier on reasonable terms and conditions for the costs that it incurs in terminating calls to the called party that originate on the LEC's network.[22] Pacific Bell had argued that paging providers were not entitled to reciprocal compensation because paging services are one-way, and paging providers do not originate any calls for termination on the LEC's network. The PUC properly rejected this argument:

> We believe that Congress intended that each and every carrier should be compensated for the costs that it incurs in terminating traffic, and did not intend to

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20 In Michigan, the PNPA members against whom Ameritech has assessed such charges include Airtouch Paging, Arch Communications, and Paging Network, Inc.

21 *See Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell*, A.97-02-003 (May 21, 1997).

22 *Cook Decision* at 3.

> deny a class of carriers -- in this case, one-way paging -- the right of compensation simply because there is no traffic terminated on the local exchange carrier's network.[23]

In a concurring statement, Commissioner Henry Duque added:

> [G]overnment policy is better founded on treating all messages equally. What difference should it make if a call terminates to a voice mail machine in a central office, to an answering machine at home, to a fax store-and-forward service in a central office, to a fax machine in a business, to a person on a phone, or to a paging device? In my view, they are all calls. Efforts to regulate messages differently based on call characteristics would necessarily lead the Commission down a path of increasing regulation.[24]

Commissioner Duque's view is, of course, the same one espoused both by Congress when it passed the 1996 Telecom Act and prior to that by the Commission.[25] PNPA encourages the Commission to exercise its leadership by enforcing its interconnection rules and policies, as California is doing.

Ameritech's Application Under Section 271 Cannot Be Granted Until The Carrier Complies With Its Interconnection Obligations.

The Telecommunications Act of 1996 amended the Communications Act of 1934 and added a new section 271 which governs Bell Operating Company entry into interLATA services. Section 271 permitted the BOCs to provide out-of-region, interLATA services immediately, but required them to apply to the FCC for authority to provide in-region, interLATA services. Section 271 forbids the Commission from granting such an application unless it finds, among other things, that "the requested authorization is consistent with the public interest, convenience,

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23 *Id.* at 4.

24 *Id., Concurring Statement of Commissioner Henry Duque,* at 1.

25 In fact, the California PUC noted that it was in agreement with the FCC on this point: "The FCC was careful to expressly specify, and clarify any perceived ambiguity, that paging providers are included in the class of CMRS providers entitled to compensation for terminating traffic." *Id., California PUC Decision,* at 4-5.

and necessity."[26] Until Ameritech complies with its reciprocal compensation obligations toward paging providers and stops charging paging carriers for traffic originated on Ameritech's network, Ameritech's entry into in-region, interLATA services would not be consistent with the public interest, convenience, and necessity.

Approval of the Ameritech application would be inconsistent with the public interest, necessity, and convenience for four reasons. First, the Commission has previously announced that swift implementation of reciprocal compensation for LEC-CMRS interconnection is essential to the public interest. Indeed, in a Notice of Proposed Rulemaking released less than a month before the Telecom Act was signed into law, the Commission stated, "Any significant delays in the resolution of issues related to LEC-CMRS interconnection compensation arrangements, combined with the possibility that LECs could use their market power to stymie the ability of CMRS providers to interconnect (and may have incentives to do so), could adversely affect the public interest." [27] Congress underscored the public interest in reciprocal compensation by expressly incorporating it into the 1996 Act. Yet more than a year has passed since that time and Ameritech continues to insist on being paid by paging providers for traffic Ameritech originates. This is, by any standard, a "significant delay" that has "adversely affect[ed] the public interest."[28] Surely the Commission cannot think the public interest is less important now that Congress has spoken, nor less urgent now that another year has passed without compliance with its rules.

Second, as a matter of simple fairness, Ameritech does not deserve to have its application granted at this time. Ameritech cites to its reciprocal compensation agreements for the exchange

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26 47 U.S.C. § 271(d)(3).

27 *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 F.C.C. Rcd. 5020, 5047 (1996).

28 *Id.*, 11 F.C.C. Rcd. at 5047.

of local traffic with various parties,[29] yet none of the carriers are CMRS or paging providers. The experience of paging carriers shows that Ameritech is not meeting its reciprocal compensation obligations, despite the fact that it is required to do so under the 1996 Act, as well as sections 20.11 and 51.703(b) of the Commission's rules. In short, Ameritech has not yet met its part of the "bargain" that is section 271. Ameritech should not enjoy the benefits of the new, competitive marketplace so long as it continues to use its dominant position in the local exchange market to force paging providers to pay for traffic originated on the Ameritech network.

Third, some of the structural safeguards in section 272 will "sunset" based on the date on which a section 271 application is granted. For example, the structural safeguards will cease to apply to a BOC's manufacturing activities three years after the date the BOC is authorized to provide in-region, interLATA services under section 271(d).[30] These safeguards are in place precisely to curb the potential for abuse of market power by the BOCs. It would be unwise to start down the path toward the "sunset" of these provisions when the evidence suggests Ameritech has not yet complied voluntarily with its legal obligations toward paging providers.

Finally, the Commission's own enforcement credibility is at stake here. Over the last ten years, the Commission has repeatedly proclaimed that LEC-CMRS interconnection should be based on principles of reciprocal compensation. So far, notwithstanding regulations in Parts 20 and 51, Ameritech continues to charge paging providers for the transport and termination of calls originated by Ameritech's customers. In the *Local Interconnection Order,* the Commission acknowledged that the promulgation of intelligent rules is useless if the rules are not followed:

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29 Brief in Support of Application by Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, at 63.

30 47 U.S.C. § 272(f)(1).

> Because of the critical importance of eliminating these barriers to the accomplishment of the Act's pro-competitive objectives, *we intend to enforce our rules in a manner that is swift, sure, and effective*. . . . We recognize that during the transition from monopoly to competition it is vital that we and the states vigilantly and vigorously enforce the rules that we adopt today and that will be adopted in the future to open local markets to competition. *If we fail to meet that responsibility, the actions that we take today to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective.*[31]

Having promised "swift, sure, and effective" enforcement — and having acknowledged that nothing less than the success of the 1996 Act may well depend on that enforcement — the Commission simply cannot *affirmatively reward* a carrier that has not implemented one of the most basic commands of the emerging, competitive future.[32]

Congress knew that the only way to elicit the BOCs' cooperation in opening up the local bottleneck was to condition their entry into the long-distance market on full satisfaction of interconnection obligations. That is the whole theory of section 271. The Commission, having failed for ten years to elicit the BOCs' cooperation on LEC-CMRS reciprocal compensation, must not give away the in-region, interLATA market until carriers keeps their end of the deal. Until Ameritech complies — finally and fully — with its ten-year-old reciprocal compensation obligations, it will not be in the public interest to permit Ameritech into the interLATA market in Michigan or anywhere else in its region. The wireless industry demands and deserves treatment as co-carriers with the local exchange community in interconnection matters.

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31 *Local Interconnection Order*, 11 F.C.C. Rcd. at 15511-12 (emphasis added).

32 Another BOC, SBC, has recently attempted to reverse the Commission's unbroken line of decisions on reciprocal compensation for paging providers, and the Commission has initiated a separate proceeding to give SBC yet another hearing on this issue. *See e.g., Request for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers*, CCB/CPD 97-24. Ameritech may follow SBC's lead and use this proceeding as a way of dodging its ten-year history of noncompliance. However, the issue here is not whether the rules on paging interconnection should be changed; the issue is whether it is in the public interest for the Commission to remove the last incentive for full compliance when the record demonstrates an obstinate refusal to comply with the rules *as they now stand*.

CONCLUSION

For the reasons set forth above, Ameritech is in violation of the Commission's interconnection rules. PNPA therefore urges the Commission to affirm its commitment to fair interconnection relationships by denying the Ameritech application (or conditioning any approval on full compliance with reciprocal compensation requirements) and making clear that it will deny all future applications from BOCs that violate these requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark A. Grannis, do hereby certify that copies of the foregoing Comments of the Paging and Narrowbanc PSC Alliance have been sent, via first class mail on this 10th day of June, 1997 to the following:

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